Supreme Court, U. S.
FILED
DEC 22 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-864

BIAGIO J. PERRELLO, PETITIONER

v.

THE INDIANA SUPREME COURT DISCIPLINARY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

BRIEF FOR RESPONDENT IN OPPOSITION

SHELDON A. BRESKOW
Executive Secretary
814 I.S.T.A. Building
150 West Market Street
Indianapolis, Indiana 46204
(317) 633-4454

Attorney for Respondent
Indiana Supreme Court
Disciplinary Commission

C. E. Pauley & Co., Inc., Indianapolis

INDEX

	Page
Table of Authorities	ii
Questions Presented	1
Supplement to Petitioner's Statement of the Case	2
Summary of Argument	3
Law Argument	3
Conclusion	7
Appendix A	1A
Appendix B	1B
Appendix C	1C

TABLE OF AUTHORITIES

Cases: *Page*

Law Students Research Council v. Wadmond (1971), 401 U.S. 154, 27 L.Ed.2d 749, 91 S.Ct. 720 6

Link v. Wabash R.R. Co. (1962), 370 U.S. 626, 8 L.Ed.2d 734, 82 S.Ct. 115 6

Preiser v. Newkirk (1975), 422 U.S. 395, 45 L.Ed.2d 272, 95 S.Ct. 2330 7

Saunders v. Baltimore and Ohio R.R. Co. (D.C., W.Va., 1945) 63 F.Supp. 705 6

Selling, et al. v. Radford (1916), 243 U.S. 46, 61 L.Ed. 585, 37 S.Ct. 377 4

Willner v. Committee on Character and Fitness (1963), 373 U.S. 96, 10 L.Ed.2d 224, 83 S.Ct. 1175 7

OTHER AUTHORITIES

Page

Code of Professional Responsibility for Attorneys at Law 5

Constitutional Provisions:

Constitution of the United States Article III 7

Indiana Rules For Admission To The Bar And The Discipline Of Attorneys:

Ind. R. A.D. 23, Section 14(g) 3, 4, 5, 6

Rules of the United States Supreme Court

Court Rule 8 ..... 3, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-864

BIAGIO J. PERRELLO, PETITIONER

v.

THE INDIANA SUPREME COURT DISCIPLINARY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

Petitioner's recital of the "Questions Presented" (Pet. pp. 2-3) overlooks the question of justiciability. This issue arises upon the "Findings and Recommendation of the Hearing Officer As To Suspension Pending Final Determination of the Cause" disclosing that Petitioner admitted the facts alleged in Respondent's Verified Complaint for Disciplinary Action. Although these "Findings and Recommendation of the Hearing Officer As To Suspension Pending Final Determination of the Cause" are an integral part

of the decision below they are omitted therefrom as copies in Petitioner's Appendix A, (unpaged) and herein supplied as Respondent's Appendix A, (pp. 1A-4A).

Except as modified by the foregoing, Respondent accepts Petitioner's statement of his "Questions Presented."

SUPPLEMENT TO PETITIONER'S STATEMENT OF THE CASE

(1)

Petitioner does not disclose that prior to the hearing on August 11, 1978 he had twice procured continuances and on August 11th sought a third continuance which was granted as to the hearing on the merits but denied as to the motion for pendente lite suspension. These facts, like his admissions, are disclosed by the omitted "Findings and Recommendation of the Hearing Officer As To Suspension Pending Final Determination of the Cause" (Appendix A, pp. 1A-3A).

(2)

Additionally, as shown by the Partial Transcript of the August 11, 1978 hearing (Appendix B, pp. 1B-10B), and the petition for suspension incorporating the complaint (Appendix C), Petitioner, previously suspended from the practice of law for a period of not less than two (2) years, reinstated and currently charged with repeating the same kind of misconduct admitted same in the face of Respondent's readiness to proceed to hearing. Also disclosed by Appendix C is the fact that no additional or different misconduct, than alleged in the Verified Complaint for Disciplinary Action, was relied upon to support the pendente lite motion for suspension, hence the grounds for suspension were the basic allegations in the Verified Complaint for Disciplinary Action.

(3)

The record discloses that Petitioner claim is not justiciable because his admissions put his case, pendente lite, in the category of an agreed case, or one presenting no issue of fact hence subject to a summary pendente lite judgment.

SUMMARY OF ARGUMENT

(1)

Petitioner asserts that Rule A.D. 23, Section 14(g) denies due process, hence is invalid, because it puts upon him the burden of proof in a hearing for pendente lite suspension. Respondent disagrees because the Rule prescribes, and Petitioner was given, the "opportunity to be heard." Also, that in this case, the question is abstract, hence not justiciable, due to Petitioner's admissions which eliminated any burden of proof.

(2)

Petitioner's assertion that Rule A.D. 23, Section 14(g) prescribes no standard for pendente lite suspension is not merely abstract. It is based upon fiction in this case, as disclosed by Appendix A, Petitioner's admissions are conclusive that he precisely knew the charges and was not surprised by any of them.

(3)

Petitioner's case, for certiorari, is based upon a fictional *might have been* theory and presents no justiciable controversy.

LAW ARGUMENT

(1)

This Court's Rule 8 permits, exparte, pendente lite suspension of an attorney "where it is shown . . . that any

member of its bar . . . has been guilty of conduct unbecoming a member of the bar of this court." Rule 8 affords the attorney "the opportunity to show good cause, within forty days, why he should not be disbarred."

Indiana's assailed Rule A.D. 23, Section 14(g) affords the charged attorney a hearing before pendente lite suspension. The opportunity to be heard is the extent of the prescription in the due process decisions even for disbarment, hence should suffice in this pendente lite suspension. *Selling, et al. v. Radford* (1916), 243 U.S. 46, 51: 61 L.Ed. 585, 587.

In *Willner v. Committee on Character and Fitness* (1963), 373 U.S. 96; 10 L.Ed.2d 224; 83 S.Ct. 1175, cited by Petitioner (Pet. p. 6) the due process issue turned upon notice and the right to be heard. The holding is most succinctly phrased in the concurring opinion of Mr. Justice Goldberg (joined by Justices Brennan and Stewart):

> The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence. *As I understand the opinion of the Court, this does not mean that in every case confrontation and cross-examination are automatically required. It must be remembered that we are dealing, at the initial stage of proceedings, not with a court trial, but with a necessarily much more informal inquiry into an applicant's qualifications for admission to the bar.* The circumstances will determine the necessary limits and incidents implicit in the concept of a "fair" hearing. *Thus, for example, when the derogatory matter appears from information supplied*

> *or confirmed by the applicant himself,* or is an undisputed documentary character disclosed to the applicant, and it is plain and uncontradicted that the committee's recommendation against admission is predicated thereon and reasonably supported thereby, *then neither the committee's informal procedures, its ultimate recommendations, nor a court ruling sustaining the committee's conclusion may be properly challenged on due process grounds, provided the applicant has been informed of the factual basis of the conclusion and has been afforded an adequate opportunity to reply or explain.* Of course, if the denial depends upon info nation supplied by a particular person whose reliability or veracity is brought into question by the applicant, confrontation and the right of cross-examination should be afforded. Since admission to the bar is ultimately a matter for the courts, there is ample power to compel attendance of witnesses as required. (Emphasis added.)

This is precisely the case at bar; the initial stage was based upon information confirmed by Petitioner for the purposes, only, of the pendente lite motion.

(2)

Petitioner incorrectly asserts an absence of standards governing pendente lite suspension. Upon that predicate he argues that he *might have been* required to meet strange and new charges. Such was not his case nor does he assert it was.

Appendix C discloses that Rule A.D. 23, Section 14(g), is not invoked in the case at bar except upon the exact charges laid in the Verified Complaint for Disciplinary Action and which are clear, undeniable and manifesting a clear and total indifference to Indiana's *Code of Profes-*

sional Responsibility for Attorneys at Law. The case against Petitioner charges repetitive misconduct for which an attorney has been suspended and reinstated upon his immediately broken pledge to abstain. That the charges were clear; that he understood them is conclusively manifested by his admissions disclosed in Appendix A.

This Court will give "respectful consideration" to an administrative agency's valid interpretation of a rule rather than an invalid interpretation to which the rule is susceptible. *Law Students Research Council v. Wadmond* (1971), 401 U.S. 154, 162; 27 L.Ed.2d 749, 758; 91 S.Ct. 720.

We submit, however, that Rule A.D. 23, Section 14(g), is not logically susceptible to Petitioner's invalid interpretation. It prescribes "ancillary" relief which is always deemed to be subordinate to the basic claim. *Saunders v. Baltimore & Ohio R.R. Co.* (D.C. W.Va., 1945), 63 F.Supp. 705, 708.

Even absent notice and preliminary hearing lack of due process is not conclusively shown:

> But this does not mean that every order entered without notice and a preliminary adversary hearing offends due process. The adequacy of notice and hearing respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances show such party may be taken to have of the consequences of his own conduct. *Link v. Wabash R.R. Co.* (1962), 370 U.S. 626, 632; 8 L.Ed.2d 734, 739; 82 S.Ct. 115.

In Petitioner's case there was clearly adequate notice. There were also three opportunities to be heard after respondent had presented its case but which he himself aborted by procuring continuances.

(3)

We submit that Petitioner presents a rather ethereal, not his real, case. As such it is not justiciable.

"The exercise of judicial power under Article III of the Constitution depends on the existence of a case or controversy." *Preiser v. Newkirk* (1975), 422 U.S. 395, 401; 45 L.Ed. 272, 277; 95 S.Ct. 2330.

Petitioner's admissions obliterate any factual controversy; his repeated opportunities to be heard extends due process protection beyond the requirements of this Court's Rule 8.

This Court will not "render advisory opinions" "upon a hypothetical state of facts." *Preiser v. Newkirk,* supra.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

s/ SHELDON A. BRESKOW
Executive Secretary

814 I.S.T.A. Building
150 West Market Street
Indianapolis, Indiana 46204
(317) 633-4454

Attorney for Respondent
Indiana Supreme Court
Disciplinary Commission

APPENDIX A

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF
BIAGIO J. PERRELLO } SS:

CAUSE NO. 678-S-105

FINDINGS AND RECOMMENDATION OF THE HEARING OFFICER AS TO SUSPENSION PENDING FINAL DETERMINATION OF THE CAUSE

The undersigned, heretofore, appointed by this Honorable Court as Hearing Officer in the above entitled cause under the provisions of Admission and Discipline Rule 23, respectfully reports as follows:

PRELIMINARY PROCEEDINGS

1. On June 12, 1978, the Disciplinary Commission of this Court filed a Verified Complaint for Disciplinary Action with the Clerk of this Court, naming Biagio J. Perrello, an attorney practicing law in Indianapolis, Indiana, as the Respondent. On that same date the Commission filed a Motion for Suspension Pending Prosecution. Said Motion sought a show cause hearing to determine whether the Respondent should be suspended pending the final determination of this cause.

2. On June 15, 1978, the undersigned was appointed as Hearing Officer in this matter and assumed jurisdiction of the same.

3. On June 23, 1978, the undersigned filed an Order with the Clerk of this Court setting the cause for pre-trial conference on July 5, 1978 and for hearing on July 12, 1978.

4. On July 5 the parties met for pre-trial conference. The Commission was present by its Executive Secretary Sheldon A. Breskow, and the Respondent was present, in person, and represented pro se. At said conference the Respondent requested continuance of the July 12, trial date so that he could obtain counsel. Said request was granted. Whereby the undersigned set the show cause hearing on the Commission's motion for temporary suspension for July 26, 1978, and hearing on the Verified Complaint for August 11, 1978.

5. On or about July 22, 1978, the Respondent filed, pro se, a Motion for Continuance, seeking a postponement of the July 26 show cause hearing. Said motion was overruled by the undersigned.

6. On July 26, 1978, the aforementioned Show Cause hearing commenced at 9:00 a.m. in the Indiana Supreme Court Conference Room. Present were the undersigned, the Commission by counsel David Copenhaver and Thomas Opsut, and the Respondent, pro se. The Respondent stated that he had obtained counsel; however, counsel had informed him that morning that he could not be present. After due consideration, the undersigned continued the show cause hearing until August 11, 1978 and further stated that no more continuances would be granted to the Respondent grounded on his inability to obtain counsel.

7. On August 4, 1978, the Respondent by counsel Mr. Ralph Ogden, filed a Verified Motion for Continuance seeking a postponement of the proceedings scheduled for August 11. As grounds for said continuance Respondent's counsel cited inadequate preparation time to prepare for the final hearing on the merits.

8. The undersigned considered said motion and on August 7, 1978, entered the following order:

Respondent's verified Motion for Continuance is carefully considered.

The complaint and Motion in this cause were filed June 12, 1978. The Respondent is not a layman but an attorney who is familiar with these proceedings and the law in connection therewith.

Respondent's Motion for further continuance is denied. Dated this 7th day of August, 1978.

THE HEARING

1. On August 11, 1978 this cause came before the undersigned for a show cause hearing on the Commission's motion for Temporary Suspension and the final hearing on the merits. Said hearing convened at 9:00 a.m. in the Supreme Court Conference Room. Present were the undersigned, the Commission, by counsel, and the Respondent, in person and by counsel, Ms. Anne Wilcox and Mr. Ralph Ogden. Prior to the hearing of any evidence Respondent's counsel filed a motion that asked that the motion for continuance of the final hearing be reconsidered. After hearing argument of counsel the undersigned granted said motion and continued the hearing on the Verified Complaint to September 14, 1978.

2. The undersigned then directed that the parties proceed with the hearing on the Commission's Motion for Suspension pending final determination of the cause. The Respondent, by counsel orally moved for a continuance, and stated that they were unaware that this matter would be considered separately from the hearing on the Verified Complaint. Further, Respondent's counsel stated that they did not have enough time to prepare to meet the burden of proof as required under Ind. R. A.D. 23, Section 14(g).

3. The undersigned overruled said motion and ordered the parties to proceed to hearing.

4. The Respondent, by counsel's statement in open court, admitted all the factual allegations contained in Counts I and II of the aforementioned Verified Complaint. The Respondent claims that such actions did not violate the Code of Professional Responsibility. The Respondent then rested without offering evidence.

5. The Commission offered into evidence a copy of the Respondent's *Oath of Attorneys*. Said document was admitted without objection. The Commission then rested. The

undersigned took judicial notice of the Verified Complaint and the record in this cause.

FINDING OF FACT

The undersigned finds:

1. That the Respondent was duly notified of the aforementioned show cause hearing; further, he had ample time to prepare for said hearing and seek counsel to present evidence or assist.

2. That pursuant to Ind. R. A.D. 23, Section 14(g), the Respondent has wholly failed to meet the burden of proof in this matter.

3. That the facts alleged by the Commission in its Verified Complaint for Disciplinary Action and admitted by Respondent at said Show Cause hearing, do constitute violations of the *Code of Professional Responsibility for Attorneys at Law* and support the Petition for Temporary Suspension.

RECOMMENDATION

Pursuant to A.D. Rule 23, Section 14(g), I.C. Court Rules, Book 2, (1973), the undersigned recommends that this Court grant the Disciplinary Commission's *Motion for Suspension Pending Prosecution,* and the Respondent should be suspended from the practice of law in the State of Indiana until final determination of this matter by this Honorable Court.

Respectfully submitted,

s/ CARL G. WINTER
Hearing Officer and Judge

Dated: 8-16-78

APPENDIX B

THE COURT: I beg your pardon?

MS. WILCOX: We will proceed with the hearing today, as we do not feel we could refuse to proceed with that hearing. We rested only as to any continuation of any arguments on our motion that this temporary suspension hearing be rescheduled. We did not rest as to the presentation of any evidence.

THE COURT: Are you prepared to go ahead, then?

MS. WILCOX: We are not prepared, but we are willing to go ahead, Your Honor.

THE COURT: Let's go ahead. Call your first witness.

MR. OGDEN: Excuse me, just a moment, Your Honor.

MS. WILCOX: Judge, at this time the Respondent would submit this stipulation or this admission. He will stipulate to or admit that the acts and conduct set out in Count I did in fact occur as set out in that Count; but would argue that those acts and conduct do not constitute misconduct under the disciplinary rules.

For purposes of Count II, the acts and conduct set out in the Disciplinary Complaint in Count I are of the same nature. They are the same acts, so that this admission as to those acts is as set out in Count I and apply to those acts as they appear in Count II and he would again on Count II assert that those acts do not provide a basis for a finding of misconduct by way of fraudulent statement or misrepresentation upon his reinstatement.

THE COURT: Anything further?

MS. WILCOX: Nothing further, Judge.

THE COURT: With those admissions, does the Commission see any need to go ahead?

MR. COPENHAVER: Your Honor, it is my understanding that Count I, Paragraph 1 is admitted as alleged?

MS. WILCOX: He is admitting to the acts and conduct, which are alleged in Count I, which are asserted in Count I to comprise the basis for the charge of misconduct.

MR. OGDEN: We are defending ultimately on the constitutional issue, which we are not prepared to assert at this hearing. We are admitting that the conduct or speech took place only for the purpose of this hearing. We will present our full defense on the constitutional issues at the hearing scheduled for September the 14th. We are stipulating that the conduct or the speech charged in Count I did in fact occur, while reserving our defense. Is that clear?

MR. COPENHAVER: I have to know, I think it's clear, but I would ask you to look at the Verified Complaint.

MR. OGDEN: All right.

MR. COPENHAVER: Are you admitting, then, that in Count I, looking at rhetorical paragraph one, the first full paragraph, is there any part of that paragraph you would not admit to?

MS. WILCOX: Yes. Perhaps it might be easier if I were to read into the record what portions of each count we are admitting to, if that would be of assistance in clarifying.

THE COURT: All right. Go on.

MS. WILCOX: As to the rhetorical paragraph one, contained in Count I, the Respondent would admit that on numerous occasions, he has approached individuals in the hallways of the Marion County Municipal Courts, offered them unsolicited legal advice and offered his services as an attorney. He would further admit that this course of conduct includes, and that course of conduct refers specifically to what we have just admitted, that this course of conduct includes personally—

THE COURT: Would you slow it down a little? I am trying to take notes.

MS. WILCOX: He would further admit to the second paragraph of rhetorical paragraph one, that this course of

conduct, which would refer to the statement I just made which he would admit, includes personally soliciting the following named individuals at the following times. And we would admit to those individuals and those times contained in subpoints A through F.

As to Count I, he would further admit that as to A through F, in each of those instances, the Respondent, without invitation and without knowing the above-named individuals, approached said individuals in the hallways of the Marion County Municipal Courts, offered legal advice, suggested that they needed an attorney and stated that for a sum certain, he would represent said individuals in court.

The Respondent would further admit that his activity of soliciting clients in the above described manner, which we have just admitted, is a general course of conduct.

The Respondent would deny each and every allegation contained in rhetorical paragraph number two of Count I.

As to Count II, all of those admissions made for the purposes of Count I would apply.

We specifically deny all remaining allegations contained in Count II, with the exception that the statement alleged to have been made to the hearing officer at the second reinstatement hearing was made by the Respondent.

As to Count II, rhetorical paragraph number two, we would admit that a hearing was held on the second petition for reinstatement filed by the Respondent. At said hearing, the Respondent testified at length regarding the conduct for which he was disciplined as set out in paragraph one. We would admit that he repeatedly stated under oath that such conduct was contrary to the Code of Professional Responsibilities for attorneys of law.

THE COURT: I didn't understand about rhetorical paragraph three in Count II.

MS. WILCOX: I'm sorry, rhetorical paragraph number two in Count II.

THE COURT: Yes. Now we are down to Count III. I didn't get that—rhetorical paragraph three. I beg your pardon.

MS. WILCOX: I am still reading from rhetorical paragraph two. I am on the section underlined on Code of Professional Responsibility. He would admit that he would never engage in such conduct if reinstated in the practice of law and he would further admit to the conclusions and findings of fact contained in subpoint—rather, the indented portion bearing the heading "Number Nine," beginning with the word, "Petitioner," and concluding with the word, "remorseful," and all the intervening words therein.

He would further admit that on or about March 3rd, 1977, based in large part upon the above finding, the Indiana Supreme Court Disciplinary Commission recommended the Respondent reinstatement to the practice of law. We would admit that on or about March 16, 1977, the Respondent was reinstated to the practice of law by order of the Indiana Supreme Court.

We would admit the allegations contained in paragraph three of Count II.

We would deny each and every allegation contained in paragraph four of Count II.

And we would state for purposes of this hearing, that the admissions to which we have made and the conduct and acts alleged in both Count I and Count II of the Verified Complaint do not legally constitute sufficient grounds for finding of misconduct pursuant to the rules for the Commission to discipline attorneys for the State of Indiana.

MR. OGDEN: We would base that contention on the legal defenses asserted in our amended answers that were submitted to this tribunal this morning.

MS. WILCOX: We would ask to incorporate by reference those legal defenses raised as to Count I and Count II in our Answer for purposes of this hearing on the Rule

to show Cause. And with the incorporation of the legal points raised in our Answer, we would ask that we also incorporate the Memorandum of Law attached to the motion to reconsider filed today with this Court, and consider that in light of the statement here that we do not believe the acts and conduct to be shown to be acts of misconduct. We would then rest.

THE COURT: Anything further?

MS. WILCOX: Nothing further, Your Honor. We rest.

THE COURT: All right. You have rested. I assume the Disciplinary Commission has no further evidence to offer?

MR. COPENHAVER: We have one bit of further evidence, Your Honor, which I think could be offered by stipulation. In order for this Court to have jurisdiction, we must offer into evidence the Respondent's Oath of Attorneys to show that he is a member of the Bar of the State of Indiana.

MR. OGDEN: We have no objections to the admission of this evidence.

(Commission Exhibit Number One was marked for identification.)

MR. COPENHAVER: At this time, Commission would offer Commission's Exhibit One, being a certified copy of the Respondent's Oath of Attorney.

THE COURT: It will be admitted without objection.

MR. OGDEN: That is correct, Your Honor.

MR. COPENHAVER: At that, Your Honor, the Commission would stand upon its Verified Complaint previously filed in this cause and based upon the holdings of the Indiana Supreme Court in previous decisions, ask that the Respondent be temporarily, a finding that the Respondent be temporarily suspended be set in the Indiana Supreme Court. We rest.

THE COURT: All right. Thank you.

MS. WILCOX: Thank you, Your Honor.

MR. OGDEN: Thank you.

THE COURT: Again, if a day or two would make any difference, Ms. Wilcox, I will be glad to consider that on the date of the hearing of September 14.

MS. WILCOX: It might be that I can submit a Motion for a Continuance to the Judge before whom I have the trial at this time.

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF
BIAGIO J. PERRELLO } CAUSE NO. 678 S 105

CERTIFICATE

This is to certify that the foregoing 21 pages constitute a true and correct transcript of the proceedings had upon the hearing of the above-entitled cause taken from my original and official stenotype notes taken in said cause.

s/ KATHLEEN ANDREWS
Notary Public

My Commission expires
March 31, 1979.

Marion County, county of
residence.

APPENDIX C

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF
BIAGIO J. PERRELLO } CAUSE NO. 678 S 105

MOTION FOR SUSPENSION
PENDING PROSECUTION

The Disciplinary Commission of the Supreme Court of Indiana heretofore determined that the misconduct of the attorney named above, if proven, would warrant disciplinary action, and having directed its Executive Secretary to file the following Verified Complaint, now by its Executive Secretary, Sheldon A. Breskow, pursuant to A.D. Rule 23, Sections 11(c) and 14(g), Court Rules, Book 2, Ind.Ann.Stat. (1973), the Disciplinary Commission having heretofore determined that there is reasonable cause to believe Respondent is guilty of misconduct which, if proven, would warrant suspension pending prosecution, now moves the Court for an order to issue a rule against the Respondent, Biagio J. Perrello, heretofore admitted to the Bar of the State of Indiana on May 20, 1970, and maintaining an office for the practice of law in Indiaanpolis, Indiana, to show cause why he should not be suspended pending final determination of the cause and requests that the court fix a time and place for a hearing thereon, and requests that notice of such hearing be served on the Respondent by personal service or certified or registered mail, all pursuant to Section 14(g) of the above-cited rule of Court and said Executive Secretary now shows to the Court the following:

The Executive Secretary hereby incorporates by reference and makes a part hereof, and attaches

hereto the Verified Complaint for Disciplinary Action filed in the above case.

(H. I.)

WHEREFORE, the Executive Secretary prays that a rule to show cause issue against the Respondent attorney fixing a time and place for a hearing thereon and giving the required notice, and that subsequent to said hearing, the Respondent attorney be suspended pending final determination of this cause, and such other relief as is necessary and proper in the premises.

s/ SHELDON A. BRESKOW
Executive Secretary
Indiana Supreme Court
Disciplinary Commission

STATE OF INDIANA
COUNTY OF MARION } ss:

Sheldon A. Breskow, being duly sworn upon his oath, deposes and says that he is the Executive Secretary of the Disciplinary Commission of the Supreme Court of Indiana appointed pursuant to Ind. A.D. Rule 23, Section 8(a), Court Rules, Book 2, Ind.Ann.Stat. (1973); that he makes this affidavit as Executive Secretary of the Disciplinary Commission, and that the facts set forth in the above and foregoing Motion are true as he is informed and believes.

s/ SHELDON A. BRESKOW

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 12th day of June, 1978.

s/ SHARON SCHOLL
Notary Public

My Commission Expires:
March 27, 1981

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION FOR SUSPENSION PENDING PROSECUTION was deposited in the United States Mail, First Class, Certified Mail, Return Receipt Requested, postage prepaid, addressed to the following:

Mr. Biagio J. Perrello
1424 Circle Tower Building
Indianapolis, Indiana 46204

this 12th day of June, 1978.

s/ SHELDON A. BRESKOW

IN THE SUPREME COURT
OF THE
STATE OF INDIANA

IN THE MATTER OF
BIAGIO J. PERRELLO } CAUSE NO. 678 S 105

VERIFIED COMPLAINT FOR DISCIPLINARY ACTION

The Disciplinary Commission of the Supreme Court of Indiana, having found reasonable cause to believe the Respondent's acts, if proven, would warrant disciplinary action, by its Executive Secretary, Sheldon A. Breskow, pursuant to Ind. R. A.D. 23, Section 12, files and presents this Verified Complaint for Disciplinary Action against Biagio J. Perrello heretofore admitted to the Bar of the State of Indiana on May 20, 1970. The Verified Complaint is as follows:

COUNT I

1. Since March 16, 1977, the Respondent has engaged in a general course of conduct which is contrary to and in

violation of the provisions of the *Code of Professional Responsibility for Attorneys at Law* in that on numerous occasions he has approached individuals in the hallways of the Marion County Municipal Courts, offered them unsolicited legal advice, and offered his services as an attorney.

This course of conduct includes, but is not limited to, personally soliciting the following named individuals at the following times:

A) During June and July 1977:
Michael J. Bates

B) On or about August 4, 1977:
Dennis Weiss
Bradley Ferguson
Puralee Bishop
Robert Miller

C) On or about September 29, 1977:
Kenneth Reals

D) On or about February 2, 1978:
Michael Elkins

E) During April, 1978:
Diana Barley

F) On or about May 5, 1978:
Jerry Dee Tarver

In each of the above stated instances the Respondent, without invitation and without knowing the above named individuals, approached said individuals in the hallway of the Marion County Municipal Courts, offered legal advice, suggested that they needed an attorney, and stated that for a sum certain he would represent said individuals in court.

The Respondent's activity of soliciting clients in the above described manner is a general course of conduct.

2. The Respondent has, by giving unsolicited advice to laymen, in person, to obtain counsel and recommending himself as a private attorney for such persons, and for accepting employment resulting from that advice, as stated in rhetorical paragraph 3, violated the following disciplinary rules found in the *Code of Professional Responsibility for Attorneys at Law:* D.R. 2-103(A) and D.R. 2-104(A).

COUNT II

1. On or about May 1, 1973, the Indiana Supreme Court in an opinion entitled *In Re Perrello,* — Ind. —, N.E.2d — (1973), written by then Chief Justice Norman Arterburn, found the Respondent, Biagio J. Perrello, was guilty of professional misconduct. The Court, by adopting the Hearing Officer's findings, stated:

> 14. While attorneys are customarily in the public corridors of the City-County Building of Marion County adjacent to the Municipal Courtrooms, it is not common practice for them actively to solicit business in violation of the Canons of Ethics.
>
> 15. The Respondent is prone to approach total strangers and initiate conversations with them.
>
> • • •
>
> 18. Mr. Perrello has engaged in the practice of advising laymen who were not his clients that they were in need of legal counsel.

From the above facts the Court concluded the following:

> To conclude that Mr. Perrello has not unethically solicited business would require the Court totally to ignore the evidence brought forward by the Disciplinary Commission, and for that matter, some of the evidence volunteered by the Respondent's witnesses. The Respondent's testimony in denial of the charges against him lacks credibility when

weighed against the statement of impartial bystanders who stand no opportunity for gain or loss by the result of these proceedings.

The Hearing Officer concludes from the evidence that the Respondent, Biagio J. Perrello, is guilty of professional misconduct in violation of Disciplinary Rule 2-103(A), Disciplinary Rule 2-104(A)(1), and Disciplinary Rule 1-102(A)(1), (4), and (6).

The Court, having found the above misconduct, suspended the Respondent from the practice of law for a period of not less than two (2) years.

2. On or about November 18, 1978, a hearing was held on the second Petition for Reinstatement filed by the Respondent. At said hearing the Respondent testified at length regarding the conduct for which he was disciplined as set out above in paragraph one. He repeatedly stated, under oath, that such conduct was contrary to the *Code of Professional Responsibility for Attorneys at Law,* injurious to the public and bar, and that he would never engage in such conduct if reinstated to the practice of law. This testimony led the hearing officer to conclude:

> 9. Petitioner testified in this case at some length. He recounted his experience in the practice from the time he was admitted in 1970 to the present. He feels that he got a wrong impression about the seriousness with which lawyers took the Canon forbidding the solicitation of business. He observed other lawyers soliciting business. He was advised by other lawyers to hang around courts to try to get business. These experiences caused him to feel that this was the way the system worked. He has been a court clerk and a Deputy Prosecutor, and in private practice he was involved in over two hundred (200) cases in Municipal and Criminal Courts. Petitioner admitted that at first he did not feel he

> should have been penalized, because the practice of soliciting was widespread. He has come to realize that the Canons of Ethics are a necessary and desirable thing for the profession, and that the welfare of the public and the profession require that they be strictly enforced.
>
> He is not hostile or resentful about his punishment but is remorseful.

On or about March 3, 1977, based in large part upon the above finding, the Indiana Supreme Court Disciplinary Commission recommended the Respondent's reinstatement to the practice of law.

On or about March 16, 1977, the Respondent was reinstated to the practice of law by order of the Indiana Supreme Court.

3. The Respondent has, since the time of his reinstatement, engaged in a course of conduct the same as that for which he originally was disciplined.

4. The Respondent by stating to the hearing officer of the Indiana Supreme Court Disciplinary Commission that he would not attempt to solicit business in the future and was truly remorseful for having done so in the past, attempted to and did deceive said hearing officer and the Indiana Supreme Court. Said misrepresentation was designed to gain readmission to the practice of law. In so doing the Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation further it adversely reflects upon his fitness to practice law and has violated the following disciplinary rules found in the *Code of Professional Responsibility for Attorneys at Law:* D.R. 1-102(A)4 and 6.

WHEREFORE, the Executive Secretary prays that the said Biagio J. Perrello be disbarred or otherwise disciplined as warranted for professional misconduct, and that Respondent be ordered by the Court to pay such expenses

to the Clerk of the Court as shall be prepared and submitted to the Court by the Executive Secretary as an itemized statement of expenses allocable to this case incurred in the course of investigation, hearing and review procedures, pursuant to Ind. R. A.D. 23, Section 16.

s/ SHELDON A. BRESKOW
Executive Secretary
Indiana Supreme Court
Disciplinary Commission

STATE OF INDIANA
} SS:
COUNTY OF MARION

Sheldon A. Breskow, being duly sworn upon his oath, deposes and says that he is the Executive Secretary of the Disciplinary Commission of the Supreme Court of Indiana appointed pursuant to Ind. R. A.D., Sec. 8(a); that he makes this affidavit as Executive Secretary of the Disciplinary Commission, and that the facts set forth in the above and foregoing Verified Complaint for Disciplinary Action are true as he is informed and believes.

s/ SHELDON A. BRESKOW

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 12th day of June, 1978.

s/ SHARON SCHOLL
Notary Public

My Commission Expires:
March 27, 1981

Indiana Supreme Court
Disciplinary Commission
150 West Market Street
814 I.S.T.A. Building
Indianapolis, Indiana 46204
(317) 633-4454

CERTIFICATE OF SERVICE

CAUSE NO. ————

The undersigned hereby certifies that a copy of the foregoing VERIFIED COMPLAINT FOR DISCIPLINARY ACTION was deposited in the United States Mail, First Class, Certified Mail, Return Receipt Requested, postage prepaid, addressed to the following:

MR. BIAGIO J. PERRELLO
Attorney at Law
1424 Circle Tower Building
Indianapolis, Indiana 46204

this 12th day of June, 1978.

s/ DAVID L. COPENHAVER